CURRENT DECISIONS

ALIENS—NATIONALITY—EXPATRIATION.—The petitioner, a French citizen, born in 1878, had completed his active military service in France. By law he automatically passed into the reserve army in 1902 and into the territorial army in 1912. In 1903 he removed to Switzerland and became naturalized there in 1909, without having obtained the consent of the French Government. The French law provides that such consent is necessary for expatriation up to the time a Frenchman passes into the territorial army. The petitioner was called into the French army in 1915, and claimed to be no longer a French citizen on the ground that at least after 1912, when by law he passed into the territorial army, governmental consent to expatriation became unnecessary. *Held,* that his expatriation was void *ab initio* and that the defect was not cured by the fact that after 1912 he could have expatriated himself by naturalization abroad without the French Government's consent. *In re Coutarel* (Tribunal Civil des Sables d'Olonne, May 30, 1916), reported in (1917) 44 CLUNET, 188.

BANKRUPTCY—PREFERENCES—RECORDING WITHIN FOUR MONTHS' PERIOD.—As security for a contemporaneous loan the debtor executed a mortgage upon his stock of merchandise at Macon, Georgia, on February 16, 1914. The mortgage was not recorded until August 20, 1914, at a time when the mortgagee knew of the debtor's insolvency. The following day an involuntary petition in bankruptcy was filed against the debtor. Recording was not fraudulently delayed and prior thereto no other liens were fixed upon the property. The local statute (Ga. Code 1910, sec. 3260) imposed the requirements of recording only in favor of a creditor who fixes a lien upon the property before the recording takes place. The trustee in bankruptcy sought to avoid the mortgage as a preferential transfer by virtue of sections 60b and 47a of the Bankruptcy Act, as amended. *Held,* that the mortgage was valid, since no one concerned in the distribution of the estate held rights superior to the mortgage prior to its record. *Martin v. Commercial Nat. Bank* (1918) 38 Sup. Ct. 176.

While previous decisions of the Supreme Court had foreshadowed this decision, it is satisfactory to have the precise point determined by the court of final authority.

CONFLICT OF LAWS—JURISDICTION FOR DIVORCE.—A German subject had married a French woman in France in 1911, where the matrimonial domicile was located. On the outbreak of war, he deserted her to join the armies of Germany. The woman brought an action for divorce in France. According to the law of Germany and of France, she became a German subject by marriage. The court appeared uncertain whether the case should be governed by the Hague Convention of June 12, 1902 (in force in Germany but abrogated in France), and whether under that Convention jurisdiction in divorce was concurrent between the courts of the country of nationality and those of the domicile or was vested solely in the national courts, provided the law of the nationality excluded the jurisdiction of the courts of the matrimonial domicile. *Held,* that the French courts of the place where the marriage was celebrated and of the matrimonial domicile would assume jurisdiction (without examining whether the German law excludes the jurisdiction of the courts of the matrimonial domicile, or whether there were courts in Germany competent

to entertain an action for divorce when the wife was domiciled and resident abroad), since otherwise under existing war conditions the woman would find herself without access to competent judges and would suffer a denial of justice. *Hamacher v. Duval* (Civil Tribunal of Boulogne, March 19, 1915), reported in (1917) 44 CLUNET, 179.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—ERROR OF TRIAL COURT.—In an action of ejectment brought in a federal district court, the trial judge received in evidence, as tending to establish title in the plaintiff, the records of certain previous suits resulting in judicial sales of tracts of land belonging to the predecessors in title of the present defendant. The plaintiff claimed title through these proceedings. Upon appeal to the Supreme Court of the United States, the defendant contended that the premises in question were not involved in the previous suits, and also that the defendant was not bound by the decrees in those suits, and that the admission of such incompetent evidence and the rendering of judgment for the plaintiff on the strength of it were such error as to amount to a violation of the defendant's rights under the "due process clause" of the Fifth Amendment. *Held,* that, whether or not the evidence was incompetent, "error of a trial judge in admitting evidence or entering judgment after a full hearing does not constitute a denial of due process of law." *Jones v. Buffalo Creek Coal & Coke Co.* (1917, U. S.) 38 Sup. Ct. 121.

It is to be noted that the trial court here was a federal court. For a discussion of denial of due process under the Fourteenth Amendment by errors of a state court, see (1917) 27 YALE LAW JOURNAL, 121. The fact that this case comes up under the Fifth Amendment should not, without more, differentiate it, since, in respect to what constitutes due process, the two amendments should be interpreted identically. Taylor, *Due Process of Law,* sec. 123; *Twining v. New Jersey* (1908) 211 U. S. 78, 101; 29 Sup. Ct. 14, 20.

CONTRACTS—EFFECT OF "WAR CLAUSE" PROVIDING FOR SUSPENSION IN TIME OF WAR.—In a contract for the sale and delivery of merchandise, concluded prior to the outbreak of war, there was a clause providing that the vendor had the privilege of suspending delivery if war should break out, and, after a certain period, of terminating the entire contract. In an action for failure to make deliveries, the defendant, relying on this clause, alleged the fact that war had supervened. The plaintiff replied that the defendant's refusal to carry out the contract was prompted by business reasons. *Held,* that the clause was valid and that the defendant's motive in cancelling the contract was immaterial. *Milne & Co. v. Phosphates Tunisiens* (Court of Paris, 3d Chamber, July 27, 1916), reported in (1917) 44 CLUNET, 167.

A similar contract containing the "war clause" above mentioned was concluded *after* the outbreak of war. The vendor, relying upon the clause, broke the contract. *Held,* that the condition provided for in the "war clause" was inoperative, inasmuch as the war actually prevailed when the contract was made. *Doughty Sons and Richardson v. Phosphates Tunsiens* (Court of Paris, 3d Chamber, July 27, 1916), reported in (1917) 44 CLUNET, 171.

For a discussion of a recent American case involving a somewhat analogous contract see (1918) 27 YALE LAW JOURNAL, 408.

CORPORATIONS—PROHIBITION AGAINST PRACTICING LAW—FURNISHING ATTORNEY TO DRAFT WILL.—Section 280 of the New York Penal Law makes it unlawful for a corporation to practice law or "to furnish attorneys or counsel or to render legal services of any kind in actions or proceedings of any nature or in